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INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 001083

SIPDIS

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E.O. 12958: DECL: 07/28/2019

TAGS: [PGOV](#) [PINR](#) [TU](#)

SUBJECT: TURKEY: JUDICIARY LOGJAM CLEARS, BUT SCARS REMAIN

REF: A. ANKARA 368

[1](#)B. ANKARA 721

Classified By: Acting DCM Daniel O'Grady for reasons 1.4 (b,d)

[1](#)1. (C) Summary: A 21-day logjam over judicial appointments has broken, allowing the prosecutors investigating the Ergenekon case to stay in place, but also putting them under greater scrutiny by the Supreme Board of Judges and Prosecutors (HSYK). The compromise allows judicial proceedings to continue while simultaneously giving the secular establishment -- increasingly on the defensive as more and more elements of the bureaucracy become coopted by the ruling Justice and Development Party (AKP) -- more control over the cases that matter most to them. While both AKP and the bureaucrats may claim victory, the judicial system itself is now a victim: any belief that the Ergenekon case had somehow stayed above politics is no longer tenable. End Summary.

[1](#)2. (C) The HSYK is a seven-member board responsible for the assignments, transfers, discipline, and work standards of state-appointed judges and prosecutors. Justice Minister Sadullah Ergin heads the board; other members include the Justice Ministry undersecretary, three members selected from the Court of Appeals, and two members from the Council of State. In its normal functions, the board members discuss issues and offer their advice to the Justice Minister, who then issues a decree to be passed by the board. The board then votes, passing decrees by a simple majority.

[1](#)3. (C) The consultative nature of the HSYK broke down over the appointment of judges for the 2009 term. The careerist members of the HSYK had been calling for the reassignment of a number of prosecutors, in particular those involved in the Ergenekon trial, in which members of the military, bureaucracy, and labor unions are being investigated for allegedly plotting murders and coups (REF A). The call for such reassignments is extraordinary, as none of the prosecutors involved are at the natural end of their seven-year assignment terms, nor are they under investigation by HSYK disciplinary authorities for incompetence or misuse of office. Board members complained, however, that more than 100 petitions have been filed against the prosecutors (none of which have been forwarded from the Justice Ministry to disciplinary authorities). The petitions allege the

prosecutors approved illegal use of wiretaps, accepted the evidence of "secret witnesses" assumed to be PKK members bargaining with the state for reinstatement of their citizenship rights, and have been leaking details of the case to the press. For his part, Minister Ergin refused to submit a list of appointments that would reassign any of the prosecutors in question. With all five careerist members of the board voting against the new appointment lists, the appointments were blocked and the judicial process was in a stalemate.

¶4. (C) After a 21-day marathon of meetings and negotiations, the Board reached a compromise. The Ergenekon prosecutors will remain in place, as proposed by the Justice Minister. However, the complaints against the prosecutors will be forwarded by the Ministry to the judiciary's disciplinary organs for assessment. The Board also agreed to appoint two "Co-Deputy Chief Prosecutors" to Istanbul Chief Prosecutor Turan Colakkadi's office. One of these Co-Deputies, Olcay Seckin, will be empowered to conduct investigations and issue decisions with the same authority as Colakkadi. The other Co-Deputy, Aykut Cengiz Engin, will be authorized to approve and execute the decisions of Colakkadi and Seckin. Other decisions were involved in the last rounds of bargaining: Manisa Chief Prosecutor Sait Gurlek will be assigned to Bursa, giving him authority over Imrali Island, where PKK leader Abdullah Ocalan is imprisoned; Sincan judge Osman Kacmaz, who has argued that President Abdullah Gul should be tried for fraud in connection to a misappropriation of state funds case (REF B), has remained in his position; and a 12th

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Heavy Penal Court will be created in Ankara, but will no assignments will be made to it in 2009.

¶5. (C) Comment: In the short term, the compromise allows Kemalists -- a group of staunchly secular elites who believe the AKP is paving the way for Islamization of Turkish society -- to walk away with greater control over the Ergenekon case (in the form of the two Co-Deputy Prosecutors). They also have the possibility of setting up members of the Ergenekon prosecution team for future reassignment (by dislodging the complaints against them from the Minister's office and placing them into disciplinary channels). The negotiations, however, have removed any doubts that the Ergenekon trial, and the judicial system as a whole, is subject to politicization. Previous to the HSYK's negotiations, there was plausible deniability that the prosecutors were acting independently and that the bureaucracy was functioning within its parameters. The wrangling over appointments will serve as a warning in the future to all judges and prosecutors that their actions may have politically motivated ramifications. That the wrangling over appointments was widely covered in the press further serves to undermine the neutrality of the courts in the public's eye.

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